

EXHIBIT C – SAMPLE CONTRACT

CONTRACT NO. 305H-15-XXX

**Contract for Services
between the
Washington State
Department of Veterans Affairs
and
(Contractor)**

This Contract is made and entered into by and between the state of Washington, Department of Veterans Affairs, hereinafter referred to as the "**DEPARTMENT**", and the **(contractor name), (address), (city, State and zip)**, hereinafter referred to as "**CONTRACTOR**."

I. PURPOSE

The purpose of this contract is to obtain technical and professional services for the implementation of a Cloud (SaaS) Based Long Term Care System-wide Electronic Medical Record (EMR) System that complies with Federal mandates, and increases quality of care to replace the paper systems at DVA facilities.

II. STATEMENT OF WORK

- A. Attachment A, attached hereto and incorporated by reference, contains the *General Terms and Conditions* governing work to be performed under this contract, the nature of the working relationship between the DEPARTMENT and the CONTRACTOR, and specific obligations of both parties.
- B. The CONTRACTOR will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as included in the DEPARTMENT'S Request for Qualifications and Quotations No. 2015-003, June 15, 2015, attached as Attachment B, and the CONTRACTOR'S proposal dated , attached as Attachment C.
- C. The CONTRACTOR shall produce the following written reports or other written documents (deliverables) by the dates indicated below.

(TBD)

All written reports required under this contract must be delivered to (TBD), the Contract Manager, in accordance with the schedule above.

- D. Attachment D, attached hereto and incorporated by reference, contains the Business Associate Agreement, which ensures that Protected Health Information (PHI) is appropriately safeguarded.

III. PERIOD OF PERFORMANCE

The period of performance of any contract(s) resulting from this RFP is tentatively scheduled to begin on or about July 1, 2015 and to end on June 30, 2018. The DVA reserves the option at its sole discretion to extend the contract for two additional one-year periods.

IV. COMPENSATION

Total compensation payable to CONTRACTOR for satisfactory performance of the work under this contract shall not exceed (\$). CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms: **(TBD)**

Expenses

CONTRACTOR shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by the DEPARTMENT as reimbursable. The maximum amount to be paid to the CONTRACTOR for authorized expenses shall not exceed \$, which amount is included in the contract total above.

Such expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. CONTRACTOR shall receive compensation for travel expenses at current state travel reimbursement rates.

V. BILLING PROCEDURES AND PAYMENT

DEPARTMENT will pay CONTRACTOR after completion of each major part of the contract and receipt of properly completed invoices, which shall be submitted to the Contract Manager.

The invoices shall describe and document, to the DEPARTMENT'S satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the contract reference number 305H-15-XXX. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

Payment shall be considered timely if made by the DEPARTMENT within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR.

The DEPARTMENT may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the

CONTRACTOR fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the DEPARTMENT.

VI. CONTRACT MANAGEMENT

The Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this contract.

CONTRACTOR Contract Manager Information	DEPARTMENT Contract Manager Information
Enter Contract Manager's Name Enter Name of CONTRACTOR Enter CONTRACTOR Address Enter City, State & Zip Code <i>Phone :</i> () <i>Fax:</i> () <i>Email address:</i> WA State UBI Number:	Erwin B. Vidallon, CFO Department of Veterans Affairs 1102 Quince Street S.E. Olympia, WA. 98501-1150 <i>Phone:</i> (360) 725-2171 <i>Fax:</i> (360) 725-2197 <i>Email address:</i> ErwinV@DVA.WA.GOV

VII. INSURANCE

The CONTRACTOR shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subcontractor, or agents of either, while performing under the terms of this contract.

The CONTRACTOR shall provide insurance coverage, which shall be maintained in full force and effect during the term of this contract, as follows:

1. Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence.

Additionally, the CONTRACTOR is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

2. The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name the state of Washington, its agents and employees as additional insureds under the insurance policy/ies.

All policies shall be primary to any other valid and collectable insurance. CONTRACTOR shall instruct the insurers to give DEPARTMENT thirty (30) calendar days advance notice of any insurance cancellation.

CONTRACTOR shall submit to DEPARTMENT within fifteen (15) calendar days of the contract effective date, a certificate of insurance that outlines the coverage and limits defined in the *Insurance* section. CONTRACTOR shall submit renewal certificates as appropriate during the term of the contract.

VIII. ASSURANCES

DEPARTMENT and the CONTRACTOR agree that all activity pursuant to this contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

IX. ORDER OF PRECEDENCE

Each of the exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable federal and state of Washington statutes and regulations
2. Special terms and conditions as contained in this basic contract instrument
3. Attachment A - General Terms and Conditions
4. Attachment B - Request for Proposals No. RFP 2015-003
5. Attachment C - Contractor's Response to RFP 2015-003 dated
6. Attachment D - Business Associate Agreement
7. Any other provision, term or material incorporated herein by reference or otherwise incorporated

X. ENTIRE AGREEMENT

This contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

XI. CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

XII. APPROVAL

This contract shall be subject to the written approval of the DEPARTMENT'S authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

THIS CONTRACT, consisting of five (5) pages and four (4) attachment(s), is executed by the persons signing below, who warrant they have the authority to execute the contract.

[CONTRACTOR'S NAME]

**DEPARTMENT OF VETERANS
AFFAIRS**

Signature

Signature

Printed Name

Erwin B. Vidallon

Printed Name

Chief Financial Officer

Title

Date

Title

Date

APPROVED AS TO FORM:

Assistant Attorney General

Date

ATTACHMENT A

GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS** - As used throughout this Contract, the following terms shall have the meanings set forth below:

- a. "CLIENT" shall mean an individual receiving service under this Contract.
- b. "CONTRACTOR" shall mean that agency, firm, provider organization, individual or other entity performing services under this Contract. It shall include any subcontractor retained by the prime CONTRACTOR as permitted under the terms of this agreement.
- c. "DEPARTMENT's VETERANS SERVICES DIVISION ADMINISTRATOR" shall mean that individual authorized to administrate this agreement on behalf of the DEPARTMENT.
- d. "DEPARTMENT" shall mean the DEPARTMENT OF VETERANS AFFAIRS of the state of Washington, any division, section, office, unit or other entity of the DEPARTMENT or any of the officers or other officials lawfully representing that DEPARTMENT.
- e. "PERSONAL INFORMATION" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- f. "SUBCONTRACTOR" shall mean one not an employee of the CONTRACTOR, who is performing all or part of those services under this Contract under a separate contract with the CONTRACTOR. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.
- g. "SUBRECIPIENT" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes CONTRACTORS that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.

2. **AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35** - The CONTRACTOR must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

3. ASSIGNMENT – Neither this Contract, nor shall any claim arising under this Contract, shall be transferred or assigned by the CONTRACTOR without prior written consent of the DEPARTMENT.

4. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND INELIGIBILITY - If federal funds are the basis for this Contract, the CONTRACTOR certifies that neither it nor its principals are presently debarred, declared ineligible or voluntarily excluded from participation in transactions by any federal department or agency.

5. CHANGE IN STATUS – In the event of substantive change in the legal status, organizational structure or fiscal reporting responsibility of the CONTRACTOR, CONTRACTOR agrees to notify the DEPARTMENT of the change. CONTRACTOR shall provide notice as soon as practicable, but, no later than thirty days after such a change takes effect.

6. CHANGES AND MODIFICATIONS - The DEPARTMENT may, at any time, by written notification to the CONTRACTOR, and without notice to any known guarantor or surety, make changes within the general scope of the services to be performed under the Contract. If the CONTRACTOR agrees to such changes, a written contract amendment reflecting such change shall be executed by the parties. An equitable adjustment in cost or period of performance or both may be made if required by the change. Any claim for adjustment in price or period of performance must be received within thirty (30) days of the CONTRACTOR's receipt of the change notice.

The DEPARTMENT may, however, receive and act upon any such claim at any time prior to final payment under this Contract at his/her discretion.

Failure to agree to any adjustment made under this section shall be an issue and may be reviewed as provided in the "Disputes" section of this Contract. Nothing in this section shall excuse the CONTRACTOR from proceeding with the Contract as changed.

7. CONFLICT OF INTEREST – The DEPARTMENT may, in its sole discretion, by written notice to the CONTRACTOR, terminate this Contract if it finds, after due notice and examination by the DEPARTMENT that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONTRACTOR in the procurement of or performance under, this Contract.

In the event this Contract is terminated as provided above, the DEPARTMENT shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of this Contract by the CONTRACTOR. The rights and remedies of the DEPARTMENT provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the DEPARTMENT makes any determination

under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Contract.

8. COVENANT AGAINST CONTINGENT FEES - The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agent maintained by the CONTRACTOR for the purpose of securing business. The DEPARTMENT shall have the right, in the event of breach of this clause by the CONTRACTOR, to annul this Contract without liability or, in its discretion, to deduct from this Contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fees.

9. DISPUTES - Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the DEPARTMENT's Director or his or her designee.

- a. The request for a dispute hearing must:
 - Be in writing;
 - State the disputed issues;
 - State the relative positions of the parties;
 - State the CONTRACTOR's name, address, and this Contract number; and
 - Be mailed to the agent and the other party's (respondents) within 3 working days after the parties agree that they cannot resolve the dispute.
- b. The respondent shall send a written answer to the requestor's statement to both the agent and the requestor within 5 working days.
- c. The agent shall review the written statements and reply in writing to both parties within 10 working days. The agent may extend this period if necessary by notifying the parties.
- d. The decision shall be admissible in any succeeding judicial or quasi-judicial proceeding.
- e. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

10. GOVERNING LAW - This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.

11. INDEMNIFICATION – To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend and hold harmless state, agencies of state and all officials, agents and employees of state, from and against all claims for injuries or death arising out of or resulting from the performance of the this Contract.

CONTRACTOR's obligations to indemnify, defend, and hold harmless includes any claim by CONTRACTOR's agents, employees, representatives or any subcontractor or its employees.

CONTRACTOR expressly agrees to indemnify, defend, and hold harmless the state for any claim arising out of or incident to CONTRACTOR's or any subcontractor's performance or failure to perform this Contract. CONTRACTOR's obligation to indemnify, defend, and hold harmless the state, shall not be eliminated or reduced by any actual or alleged concurrent negligence of the state or its agents, agencies, employees and officials.

CONTRACTOR waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officials, agents or employees.

12. INDEPENDENT CAPACITY – The parties intend that an independent CONTRACTOR relationship will be created by this Contract. The CONTRACTOR and his or her employees or agents performing under this Contract are not employees or agents of the DEPARTMENT. The CONTRACTOR will not hold himself/herself out as nor claim to be an officer or employee of the DEPARTMENT or of the state of Washington by reason hereof, nor will the CONTRACTOR make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the CONTRACTOR.

13. LICENSING AND ACCREDITATION STANDARDS - The CONTRACTOR shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary in the performance of this Contract.

14. LIMITATION OF AUTHORITY - Only the DEPARTMENT or its delegate by writing (delegation to be made prior to action) shall have the express, implied or apparent authority to alter, amend, modify or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification or waiver of any clause or condition of this Contract is not effective or binding unless made in writing and signed by the DEPARTMENT.

15. NONDISCRIMINATION – During the performance of this Contract, the CONTRACTOR shall comply with all federal and state nondiscrimination laws, regulations and policies. In the event of the CONTRACTOR's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part, and the CONTRACTOR may be declared ineligible for further contracts with the DEPARTMENT. The CONTRACTOR shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

16. OVERPAYMENTS AND ASSERTION OF LIEN - In the event that the DEPARTMENT establishes overpayments or erroneous payments made to the CONTRACTOR under this Contract, the DEPARTMENT may secure repayment, plus interest, if any, through the filing of a lien against the CONTRACTOR's real property or by requiring the posting of a bond, assignment of deposit or some other form of security acceptable to the DEPARTMENT or by doing both.

17. PERFORMANCE MEASUREMENT AND MONITORING – Impacts and outcomes achieved as a result of the delivery of services may be measured and evaluated by the DEPARTMENT in a Periodic Performance Report form, in accordance with Exhibit A. The DEPARTMENT may evaluate CONTRACTOR's performance at Contract completion and at least once a quarter. An annual evaluation will be conducted during the sixty-day period following this Contract anniversary date, except DEPARTMENT can establish which better accommodates the DEPARTMENT's particular needs. The evaluation will cover a period ending with an established date. The DEPARTMENT may utilize the standardized Period Performance Report form and/or supplement the process with special performance factors peculiar to the specific contractual needs. Each evaluation shall include an assessment of the CONTRACTOR's efforts toward achieving DEPARTMENT objectives. The form is designed to aid the DEPARTMENT in referrals, clarify CONTRACTOR's duties and DEPARTMENT expectations, and inform CONTRACTORS of their performance strengths and weaknesses.

18. PRIVACY - Personal information collected, used or acquired in connection with this Contract shall be used solely for the purposes of this Contract. CONTRACTOR and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law. CONTRACTOR agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The DEPARTMENT reserves the rights to monitor, audit or investigate the use of personal information collected, used or acquired by the CONTRACTOR through this Contract. The monitoring, auditing or investigating may include but is not limited to "salting" by the DEPARTMENT. CONTRACTOR shall certify the return or destruction of all personal information upon expiration of this Contract. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the Contract and the demand for return of all personal information. The CONTRACTOR agrees to indemnify and hold harmless the DEPARTMENT for any damages related to the CONTRACTOR's unauthorized use of personal information.

For the purposes of this provision, personal information includes but is not limited to information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

19. RECORDS, DOCUMENTS, AND REPORTS – The CONTRACTOR shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. CONTRACTOR shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under this Contract, shall be subject at all reasonable times to inspection, review or audit by the DEPARTMENT, personnel duly authorized by the DEPARTMENT, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

20. REGISTRATION WITH DEPARTMENT OF REVENUE - The CONTRACTOR shall complete registration with the Department of Revenue, General Administration Building, Olympia WA 98504, and be responsible for payment of all taxes due on payments made under this Contract.

21. RIGHT OF INSPECTION - The CONTRACTOR shall provide right of access to its facilities to the DEPARTMENT or any of their officers at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract on behalf of the DEPARTMENT. All inspections and evaluations shall be performed in such a manner that will not unduly interfere with the CONTRACTOR's business or work hereunder.

22. RIGHTS IN DATA - Unless otherwise provided, data that originates from this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the DEPARTMENT. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

Data that is delivered under this Contract, but that does not originate therefrom, shall be transferred to the DEPARTMENT with a nonexclusive, royalty free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of,

and to authorize others to do so; provided that such license shall be limited to the extent that the CONTRACTOR has a right to grant such a license.

The CONTRACTOR shall exert all reasonable effort to advise the DEPARTMENT, at the time of delivery of data furnished under this agreement, of all known or potential invasions of privacy contained therein and of any portion of such document, which was not produced in the performance of this agreement. The DEPARTMENT shall receive prompt written notice of each notice or claim or copyright infringement received by the CONTRACTOR with respect to any data delivered under this agreement. The DEPARTMENT shall have the right to modify or remove any restrictive markings placed upon the data by the CONTRACTOR.

23. SAFEGUARDING OF INFORMATION - The CONTRACTOR shall not use or disclose any Personal Information gained by reason of this Contract or Information that may be classified as confidential for any purpose not directly connected with the administration of this Contract except (1) with prior written consent of the DEPARTMENT or (2) as may be required by law. The CONTRACTOR shall safeguard such information and shall return or certify destruction of the information upon this Contract expiration or termination.

24. SAVINGS - In the event funding from state, federal or other sources is withdrawn, reduced or limited in any way after the effective date of this Contract and prior to normal completion, the DEPARTMENT may terminate this Contract under the "Termination for Convenience" clause, without advance notice.

25. SEVERABILITY – If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Contract, and to this end the provisions of this Contract are declared to be severable.

26. SUBCONTRACTING - Neither the CONTRACTOR nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval of the DEPARTMENT. In no event shall the existence of the subcontract operate to release or reduce the liability of the CONTRACTOR to the DEPARTMENT for any breach in the performance of the CONTRACTOR's duties. This clause does not include contracts of employment between the CONTRACTOR and personnel assigned to work under this Contract.

27. TERMINATION FOR CONVENIENCE - Except as otherwise provided in this Contract, the DEPARTMENT or the CONTRACTOR may, by thirty (30) days written notice, beginning on the second day after the mailing, terminate this Contract in whole or in part. If this Contract is so terminated, the DEPARTMENT shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

28. TERMINATION FOR DEFAULT - The DEPARTMENT may terminate this Contract for default, in whole or in part, by written notice to the CONTRACTOR if the DEPARTMENT has a reasonable basis to believe that the CONTRACTOR has:

- a. Failed to meet or maintain any requirement for Contracting with the DEPARTMENT;
- b. Failed to ensure the health or safety of any client for whom services are being provided under this Contract;
- c. Failed to perform under or otherwise breached, any term or condition of this Contract; and/or
- d. Violated any applicable law or regulation.

If it is later determined that the CONTRACTOR was not in default, the termination shall be considered a termination for convenience.

29. TERMINATION PROCEDURE - Upon termination of this Contract, the DEPARTMENT, in addition to any other rights provided in this Contract, may require the CONTRACTOR to deliver to the DEPARTMENT any property specifically produced or acquired for the performance of such part of this agreement as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The DEPARTMENT shall pay to the CONTRACTOR the agreed upon price, if separately stated, for completed work and services accepted by the DEPARTMENT and the amount agreed upon by the CONTRACTOR and the DEPARTMENT for (a) completed work and services for which no separate price is stated, (b) partially completed work and services, (c) other property or services that are accepted by the DEPARTMENT, and (d) the protection and preservation of the property, unless the termination is for default, in which case the DEPARTMENT shall determine the extent of the liability of the DEPARTMENT. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this agreement.

The DEPARTMENT may withhold from any amounts due the CONTRACTOR for such completed work or services such sum as the DEPARTMENT determines to be necessary to protect the DEPARTMENT against potential loss or liability.

The rights and remedies of the DEPARTMENT provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

After receipt of a notice of termination, and except as otherwise directed by the DEPARTMENT, the CONTRACTOR shall:

- a. Stop work under the agreement on the date and to the extent specified in the notice;
- b. Place no further orders or subcontracts for materials, services or facilities except as necessary to complete such portion of the work not terminated;
- c. Assign to the DEPARTMENT, in the manner, at the times, and to the extent directed by the DEPARTMENT, all of the rights, titles, and interest of the CONTRACTOR under the orders and subcontracts in which case the DEPARTMENT has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the DEPARTMENT to the extent he/she may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the DEPARTMENT and deliver, in the manner, at the times and to the extent as directed by the DEPARTMENT, any property which, if the Contract had been completed, would have been required to be furnished to the DEPARTMENT;
- f. Complete performance of such part of the work not terminated by the DEPARTMENT; and,
- g. Take such action as may be necessary or as the DEPARTMENT may direct, for the protection and preservation of the property related to this Contract that is in the possession of the CONTRACTOR and in which the DEPARTMENT has or may acquire an interest.

30. TREATMENT OF ASSETS - Title to all property financed or furnished by the DEPARTMENT shall remain in the DEPARTMENT. Title to all property purchased by the CONTRACTOR, for which the CONTRACTOR is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in the DEPARTMENT upon delivery of such property to the CONTRACTOR. Title to other property, the cost of which is reimbursable to the CONTRACTOR under the Contract, shall pass to and vest in the DEPARTMENT upon (i) issuance for use of such property in the performance of this Contract or (ii) commencement of use of such property in the performance of this Contract or (iii) reimbursement of the cost thereof by the DEPARTMENT in whole or in part, whichever first occurs.

Any property of the DEPARTMENT furnished to the CONTRACTOR shall, unless otherwise provided herein or approved by the DEPARTMENT, be used only for the performance of this Contract.

The CONTRACTOR shall be responsible for any loss or damage to property of the DEPARTMENT that results from the negligence of the CONTRACTOR or that results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.

If any DEPARTMENT property is lost, destroyed or damaged, the CONTRACTOR shall notify the DEPARTMENT and shall take all reasonable steps to protect the property from further damage.

The CONTRACTOR shall surrender to the DEPARTMENT all property of the DEPARTMENT prior to settlement upon completion, termination or cancellation of this Contract.

All reference to the CONTRACTOR under this clause shall include CONTRACTOR's employees, agents or subcontractors.

31. WAIVER OF DEFAULT - Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Waiver shall not be construed to be a modification of the terms of the Contract unless stated to be such in writing, signed by the DEPARTMENT.

ATTACHMENT B
Request for Proposals No. RFP 2015-003

Attachment C
Contractor's Response to RFP 2015-003 dated

ATTACHMENT D
BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is entered into this XXXX, 2015, by and between Washington State Department of Veterans Affairs ("Covered Entity"), and XXXX ("Business Associate").

RECITALS:

- A. Covered Entity, including facilities/agencies owned and operated by Covered Entity, is designated as a "Covered Entity," as defined by the federal Health Insurance Portability and Accountability Act of 1996 and its promulgating regulations ("HIPAA"), and as amended by the regulations promulgated pursuant to the Health Information Technology for Economic and Clinical Health Act ("HITECH").
- B. Business Associate has an underlying business relationship ("Underlying Contract") with Covered Entity, in which Business Associate performs functions or activities, or provides certain services, on behalf of Covered Entity.
- C. In the course of providing such services, Business Associate may have access to, receive from, maintain, transmit, create, and/or receive on behalf of Covered Entity, Protected Health Information ("PHI").
- D. Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to this Agreement and in order to comply with HIPAA and its implementing regulations including the Privacy Rule (defined below), the Security Rule (defined below) and the Breach Notification Rule (defined below).

NOW, THEREFORE, in consideration of these recitals and the mutual promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Covered Entity and Business Associate, intending to be legally bound, agree as follows:

AGREEMENT:

I. DEFINITIONS

- A. "Breach" shall have the meaning given to such term at 45 C.P.R. § 164.402.
- B. "Breach Notification Rule" shall mean the rule related to breach notification for Unsecured Protected Health Information at 45 C.P.R. Parts 160 and 164.
- C. "Electronic protected health information" or ("EPHI") shall have the same meaning given to such term under the Security Rule, including, but not limited to, 45 C.P.R. § 160.103 limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- D. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules.

- E. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information, codified at 45 C.P.R. Parts 160 and Part 164, Subparts A and E.
- F. "Protected Health Information" or "PHI" shall have the meaning given to such phrase under the Privacy and Security Rules at 45 C.P.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of the Covered Entity.
- G. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information, codified at 45 C.P.R. § 164 Subparts A and C.
- H. "Unsecured PHI" shall have the meaning given to such phrase under the Breach Notification Rule at 45 C.P.R. § 164.402.
- I. Other terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy, Security or Breach Notification Rules and the Underlying Contract. Where there is a conflict between meanings in either this Agreement together with the Privacy, Security or Breach Notification Rules and the Underlying Contract, then the meanings in this Agreement together with the Privacy, Security or Breach Notification Rules shall govern.

II. OBLIGATIONS OF THE PARTIES WITH RESPECT TO PHI.

A. Obligations of Business Associate. Business Associate shall:

1. Not use or disclose PHI other than as permitted or required by the Underlying Contract or as required by law;
2. Not use or disclose PHI in a manner that would violate the Privacy Rule if done by the Covered Entity, unless expressly permitted to do so pursuant to the Privacy Rule and this Agreement, provided that if Business Associate carries out one or more of Covered Entity's obligations under the Privacy Rule pursuant to the Underlying Contract, Business Associate shall fully comply with the Privacy Rule requirements that would apply to Covered Entity in the performing those obligations;
3. Use appropriate safeguards, and comply with the Security Rule at Subpart C of 45 CFR Part 164 with respect to EPHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
4. Report to Covered Entity immediately, and in no case later than five (5) calendar days of Business Associate's discovery, any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, any Breaches of Unsecured PHI as required at 45 CFR 164.410, any security incident of which it becomes aware, or any breach as such may be defined under relevant state data breach laws ("State Law Breach"). Any notice of a Breach or State Law Breach referenced in this Section IV will include the results of the risk assessment of whether there is a low probability that the PHI has been

compromised based on the required factors set forth in 45 CFR 164.402 if the Breach is discovered on or after September 23, 2013, and to the extent possible, the identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, used, or disclosed during such Breach. Notwithstanding anything set forth in this Agreement or the Underlying Contract, Business Associate shall be responsible for the cost of the risk assessment and any breach mitigation expenses and shall indemnify, defend and hold Covered Entity and its officers, directors, affiliates, employees, agents, successors and assigns harmless, from and against any and all losses, claims, actions, demands, liabilities, damages, costs and expenses (including costs, expenses incurred in notifying individuals, the media or government agencies in connection therewith) and any judgments, settlements, court costs and reasonable attorneys' fees actually incurred (collectively, "Breach Claims") arising from or related to: (i) the use or disclosure of PHI in violation of the terms of this Agreement or applicable law, and (ii) whether in oral, paper or electronic media, any HIPAA Breach of unsecured PHI and/or State Law Breach. If Business Associate assumes the defense of a Breach Claim, Covered Entity shall have the right, at its expense, to participate in the defense of such Breach Claim. Business Associate shall not take any final action with respect to any Breach Claim without the prior written consent of Covered Entity. To the extent permitted by law, Business Associate shall be fully liable to Covered Entity for any acts, failures or omissions of its agents and subcontractors in furnishing the services as if they were the Business Associate's own acts, failures or omissions;

5. Make available PHI in a designated record set to Covered Entity in the form and format as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524 within five (5) business days of receiving a request from Covered Entity;
6. Provide access, at the request of Covered Entity, and in no case later than five (5) business days after such request, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an individual or third party designated by the individual, in the form or format requested if it is readily producible in such form or format in order for the Covered Entity to meet the requirements under the Privacy Rule;
7. Make any PHI contained in a Designated Record Set available to Covered Entity (or an individual as directed by Covered Entity) within five (5) business days of a request for purposes of amendment per 45 C.F.R. §164.526. If an individual requests an amendment of PHI directly from Business Associate or its Subcontractors, Business Associate shall forward the request to Covered Entity within two business days;
8. Maintain and make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528. If an accounting of disclosures is

requested by an individual directly to Business Associate, the Business Associate will forward the request to Covered Entity within two (2) business days;

9. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s) and to the extent any such obligations involve disclosures of PHI to health plans, comply with the requirements of 45 CFR 164.522 regarding requested restrictions on health plan disclosures;
10. Make its internal practices, books and records, including policies and procedures, relating to the use and disclosure of PHI available to the Secretary of HHS and to Covered Entity for purposes of determining Covered Entity's compliance with the HIPAA Rules;
11. Use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI as required by 45 C.F.R. Part 164 Subpart C ("Security Rule"). With respect to EPHI, Business Associate shall comply with all applicable state laws governing information security breaches;
12. Ensure that any agents and Subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate agree to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Business Associate shall ensure that any agent or Subcontractor to whom Business Associate provides EPHI agrees to implement reasonable and appropriate safeguards to protect EPHI.
13. To the extent permitted by law, cooperate with Covered Entity to ensure that legal process conforms with the applicable requirements of the HIPAA Rules or, if necessary in Covered Entity's opinion, obtain a qualified protective order to limit or prevent the disclosure of PHI in the event of the receipt of a subpoena, court or administrative order or other discovery request.

B. Permitted Uses or Disclosures by Business Associate. Business Associate may use or disclose PHI only:

1. As necessary to perform the services set forth in the Underlying Contract, provided that Business Associate must be specifically authorized in writing by an authorized representative of Covered Entity to use PHI to de-identify the information in accordance with 45 CFR 164.514(a)-(c);
2. As required by law;
3. If uses and disclosures and requests for PHI are consistent with Covered Entity's minimum necessary policies and procedures;

4. In a manner that would not violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except that Business Associate may use PHI to carry out the legal responsibilities of the Business Associate only if Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person agrees to notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; and
5. To provide data aggregation services relating to the health care operations of Covered Entity only if authorized to do so in the Underlying Contract.

C. Covered Entity Privacy Practices and Restrictions.

1. Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
2. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
3. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

III. TERM AND TERMINATION.

- A. Term. This Agreement shall be effective as of the date set forth above and shall continue until Business Associate ceases to perform the services defined in the Underlying Contract.
- B. Termination for Cause. Covered Entity may immediately terminate this Agreement in the event that Business Associate materially breaches any provision of this Agreement or the Underlying Contract.

In its sole discretion, Covered Entity may permit Business Associate the opportunity to cure or to take substantial steps to cure such material breach to Covered Entity's satisfaction within thirty (30) days after receipt of written notice from Covered Entity.

- C. Obligations of Business Associate upon Termination. Upon the expiration or termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, shall:
1. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

2. Return to Covered Entity or destroy all PHI in any form, including such information in possession of Business Associate's Subcontractors, and retain no copies, if it is feasible to do so;
3. If return or destruction is not feasible, extend all protections, limitations and restrictions contained in this Agreement to Business Associate's use and/or disclosure of any retained PHI, and to limit further uses and/or disclosures to only those purposes that make the return or destruction of the PHI infeasible;
4. Not use or disclose PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set forth above in section B under "Permitted Uses and Disclosures by Business Associate" which applied prior to termination.
5. Return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

This provision and the breach reporting provisions in Section II.A.4 shall survive the termination or expiration of this Agreement and/or any Underlying Contract.

IV. MISCELLANEOUS.

- A. Amendment. Amendments to this Agreement may be necessary to comply with modifications to the HIPAA Rules. Covered Entity and Business Associate agree to use good-faith efforts to develop and execute any amendments to this Agreement as may be required for compliance the HIPAA Rules. This Agreement may be amended or modified only in writing signed by Covered Entity and Business Associate.
- B. Severability. In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Agreement, which shall remain in full force and effect and enforceable in accordance with its terms.
- C. Independent Contractor. For purpose of its obligations under this Agreement, Business Associate is an independent contractor of Covered Entity and shall not be considered an agent of Covered Entity.
- D. Limited Liability Exclusion. To the extent that Business Associate has limited its liability under the terms of the Underlying Contract, whether with a maximum recovery for direct damages or a disclaimer against any consequential, indirect or punitive damages, or other such limitations, all limitations shall exclude any damages to Covered Entity arising from Business Associate's breach of its obligations relating to the use and disclosure of PHI.
- E. Equitable Remedies. Business Associate stipulates that its unauthorized use or disclosure of PHI would cause irreparable harm to Covered Entity, and in such event, Covered Entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.

- F. Ownership of PHI. Under no circumstances shall Business Associate be deemed in any request to be the owner of any PHI used or disclosed by or to Business Associate by Covered Entity.
- G. No Third Party Beneficiaries. Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein actually confer, upon any person other than Covered Entity, Business Associate and, to the extent specified above, their respective parent entities, subsidiaries, affiliates, facilities, insurers, employees, directors, officers, subcontractors, agents or other members of their respective workforces, successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- H. Waiver. No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
- I. Assignment. Neither Party may assign (whether by operating or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.
- J. Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Facsimile or electronic signatures shall be treated as original signatures.
- K. Construction. This Agreement shall be construed as broadly as necessary to implement and comply with the HIPAA Rules. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

IN WITNESS WHEREOF, Covered Entity and Business Associate have executed this Agreement as of the date first set forth above.

BUSINESS ASSOCIATE

By: _____

Printed Name:

Title

**WASHINGTON STATE DEPARTMENT OF
VETERANS AFFAIRS**

By: _____

Erwin B. Vidallon

Printed Name
Chief Financial Officer

Title

Attachment E
Schedules Required for Subscription